

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Jason Kinzer,

5 Plaintiff

6 v.

7 Allegiant Air, LLC, et al.,

8 Defendants
9

2:15-cv-02306-JAD-PAL

Order Denying Motion for Attorney's
Fees

[ECF No. 45]

10 Former Allegiant Air Captain Jason Kinzer sues Allegiant Air, LLC and Allegiant Travel Co.
11 (collectively, "Allegiant") for wrongful discharge, defamation, and intentional infliction of emotional
12 distress, all stemming from his 2015 employment termination. Allegiant removed the case from
13 Nevada state court, invoking this court's federal-question and diversity jurisdiction. Kinzer
14 successfully moved to remand, and now requests \$12,602.50 in attorney's fees and costs under 28
15 U.S.C. § 1447(c).¹ I decline to award Kinzer attorney's fees for Allegiant's improper removal
16 because I do not find that Allegiant lacked an objectively reasonable basis for removal.²

17 **Discussion**

18 **A. Attorney's fees under 28 U.S.C. § 1447(c)**

19 The American Rule recognizes that each party in litigation must bear its own attorney's fees
20 in the absence of a rule, statute, or contract authorizing an award of fees.³ Title 28 section 1447(c) of
21 the United States Code is a fee-shifting statute; it provides that a removal order may award
22 "payment of just costs and any actual expenses, including attorney fees" incurred as a result of an
23 improper removal.⁴ The United States Supreme Court has held that, "[a]bsent unusual

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25 ¹ ECF No. 45.

26 ² I find this motion suitable for disposition without oral argument. L.R. 78-2.

27 ³ *MRO Commc'n Inc. v. Tel. & Co.*, 197 F.3d 1276, 1281 (9th Cir. 1999).

28 ⁴ 28 U.S.C. § 1447(c).

4 Though it's a close call, I decline to award Kinzer attorney's fees for Allegiant's ultimately
5 unsuccessful removal of this case. I note that Allegiant's petition for removal invoked this court's
6 diversity and federal-question jurisdiction, so its assertion that it removed this case *solely* on the
7 basis of federal-question jurisdiction is disingenuous.⁶ However, Kinzer's remand motion swiftly
8 disposed of Allegiant's fatally flawed diversity argument in a single paragraph, and Allegiant quickly
9 conceded that argument in its response to his remand challenge. The bulk of Allegiant's removal
10 argument was based on federal-question jurisdiction stemming from a trio of exceptions to the well-
11 pleaded complaint rule and numerous references to federal aviation regulations in Kinzer's
12 complaint. Though I ultimately rejected each of Allegiant's arguments, I cannot conclude that
13 Allegiant's arguments for removal jurisdiction were objectively unreasonable. There is no Ninth
14 Circuit case that squarely supports or rejects Allegiant's removal arguments. Accordingly, I decline
15 to award Kinzer attorney's fees and costs for successfully moving for remand.

Accordingly, IT IS HEREBY ORDERED that **plaintiff's motion for attorney's fees [ECF**
No. 45] is DENIED.

Jennifer A. Dorsey
United States District Judge

⁶ Compare ECF No. 1 (petition for removal asserting both bases for removal) *with* ECF No. 16 (response to motion to remand abandoning diversity argument) and ECF No. 47 (opposition to motion for fees falsely claiming that defendants never invoked diversity jurisdiction).